

# e-Discovery Civil Procedure: Three Email Messages Do Not Establish Personal Jurisdiction

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*Pelowski v. Pipe*, 2010 Cal. App. Unpub. LEXIS 549, 14-15 (Cal. App. 1st Dist. Jan. 26, 2010) is case where the Plaintiff's appealed the judgment of dismissal of a Defendant based on the lack of personal jurisdiction.

The Plaintiffs argued that both general and personal jurisdiction in California were properly established, because the Defendant "communicated regularly" with people in California. *Pelowski*, at \*22-23.

The Plaintiffs offered an email string and another email setting up a meeting in New York as proof of these communications. These email messages were over several years. Other evidence was offered, but this article will only focus on the email arguments.

The Court of Appeals disagreed and found that the Plaintiffs failed to show by a preponderance of evidence facts establishing personal jurisdiction.

## Plaintiff's Evidence for General Jurisdiction

The Plaintiff offered the following evidence to support their claims of jurisdiction over the Defendant:

- (1) An email string where the Defendant was a recipient of a message regarding the terms of a lease in California;
- (2) An email string where the Defendant was a recipient of a message from the vice-president of a company based in California; and
- (3) An email string where a message was sent to the Defendant requesting her advice "on the best approach . . . on a deal structure" with another company whose location was not stated.

*Pelowski*, at \*22.

## General Jurisdiction Requirements



A Defendant must have sufficient contacts with a forum state to establish personal jurisdiction of an out-of-state Defendant not physically in the forum state. These contacts include such communications as mail, telephone and electronic communications. *Pelowski* , at \*23.

As the Supreme Court explained in *Burger King v. Rudzewicz*, “it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted.” *Pelowski* , at \*23, citing *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 476.

### Holding on General Jurisdiction

The Court held that the email evidence did not establish that the Defendant made contact with people in California (two of the email messages were sent to her and she forwarded two of them on to others who were based in New York). *Pelowski* , at \*24-25. There was also no evidence she ever made contact with the vice president of a California company after getting an email from him. *Pelowski* , at \*25. The Court

stated even if the Defendant had the one contact it alone would not have proven she had “communicated regularly with persons in California via email.” *Pelowski* , at \*25.

The Court found the Defendant did not have sufficient minimum contacts with California to establish general jurisdiction over her. The email messages and other contacts were not “so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction.” *Pelowski* , at \*27-28, citations omitted.

### Resolution of Specific Jurisdiction

Specific jurisdiction exists where there is expressly aimed conduct at a forum state. *Pelowski* , at \*35-36.

The Court’s analysis of Specific Jurisdiction was more detailed, but reached the same conclusion: There was no evidence that the recipients of the Defendant’s messages were in fact located in California or that the Defendant knew they were located in California. *Pelowski* , at \*33. In fact, two of the recipients were located in New York. *Id.*



The Court held the vague emails were not sufficient to show directed conduct at the state of California. *Pelowski* , at \*34-35. Moreover, one email to someone in New York that the

Defendant would contact someone in California was not evidence there were “continuing relationships and obligations with citizens of [California].” *Pelowski*, at \*36.

## Bow Tie Thoughts



### ***Personal Jurisdiction Redux***

Courts will continue to “drive through” *Burger King* and the personal jurisdiction cases from the last 150 years with the explosion of iPhones, iPads, BlackBerries, Social Networking sites and whatever else is about to hit the market better connecting people.

Consider this...

Can being “Friends” with someone on Facebook who lives in a different state be enough to establish jurisdiction in their state if there is a dispute?

Can venue be established by text messages?

These issues might just be Civil Procedure exam questions, but they will one day be litigated.

### ***e-Discovery is the Practice of Law***

Understanding e-Discovery is now a requirement to practice law.

The substantive elements of electronic discovery are more than just the form of production, data reduction and document review. Attorneys may find themselves running searches in a litigation support review application for smoking gun emails to establish minimum contacts for personal jurisdiction.

We are taught in law school to analyze facts and apply them to the law. Analyzing “The Facts” requires knowing what “The Facts” are. Today’s “Facts” are contained in email messages, Word documents, Excel files, social networking sites and text messages.

In the above case, “the Facts” were email messages to show sufficient minimum contacts for personal jurisdiction. In your case it might be an anticipatory breach of contract or insider trading. Regardless, you need to be aware that traditional principles of law and electronic discovery go hand in hand.